Final Draft Agreement
Between Wisconsin Electric Power Company (WEPCO) and Wisconsin Department of Natural Resources (DNR):

Summary of Comments Received and DNR Responses

A. Comments Resulting in Changes to the Agreement

1) **Comment**: The draft agreement would allow WEPCO to submit certain excess emission reports and operation permit reports electronically at the company's discretion, as soon as WDNR develops procedures for authenticating electronic signatures. EPA does not currently have a national position regarding the acceptance of electronic reporting and/or signatures but is reviewing the issue. Electronic reporting must meet federal legal requirements as well as state requirements.

   DNR Response: The text of the final agreement will be modified to state that electronic reporting will be allowed as soon as both WDNR and EPA develop the necessary procedures.

2) **Comment**: WEPCO should be required to keep a signed copy in their records of any wastewater noncompliance notifications sent by email.

   DNR Response: Wastewater noncompliance notifications normally must be signed and submitted on paper, but DNR's regulation allows for electronic reporting "with appropriate agreements." The text of the final agreement will be modified as the commenter suggests.

3) **Comment**: The electronic reporting advisory committee should be charged with developing recommendations by August 15, 2001, not just a report of initial findings.

   DNR Response: The text of the final agreement will be modified as the commenter suggests. However, it is also necessary to push back the deadline for an initial meeting of the advisory committee to March 5, 2001 (one month after signing the agreement).

4) **Comment**: The draft agreement is not specific enough about how EPA would be notified when WEPCO exercises the General Construction Permit Exemption clause.

   DNR Response: The text of the final agreement will be modified to note that EPA will be notified in writing. The person to be notified will be identified by their position title and address.

5) **Comment**: The draft agreement outlines a procedure where DNR meets with WEPCO within 45 days of receiving notice of the proposed recovery of material from a landfill. WEPCO has already removed material from one of the listed landfills under a DNR-approved remedial action plan. The agreement should say that WEPCO is not required to notify or meet with DNR in this one special case.

   DNR Response: The text of the final agreement will be modified as the commenter suggests.

6) **Comment**: The agreement should bind DNR to maintaining a record of administrative and other cost savings by the agency. This information should be made public via WEPCO's annual summary performance report.

DNR Response: The text of the final agreement will be modified as the commenter suggests.

B. Other Significant Comments that Did Not Result in Changes to the Agreement

1) **Comment**: Public hearings shouldn't be at 1:30 p.m. on a weekday when residents cannot attend.

DNR Response: DNR did not schedule the hearing in such a way as to exclude participation by interested persons. We scheduled it during normal government working hours. If DNR had been aware of substantial public interest in the proposed agreement, we could potentially have rescheduled the hearing for after hours. But DNR did not receive a single written request or comment of that nature, before or during the 30-day public comment period.

2) **Comment:** WEPCO should be proposing to install scrubbers and reduce pollution, but instead they are asking to be deregulated. Power plants should be highly regulated and monitored by government agencies. One huge power plant in a small community is enough, and they have been questionable neighbors. Pollution in the community is already awful and getting worse. DNR should not allow WEPCO to create more pollution in an already over-polluted area. Neighbors are opposed to deregulation or self-regulation and in favor of more stringent regulations that reduce emissions. Under this agreement, can WEPCO increase emissions/discharges and can they introduce new emissions/discharges?

DNR Response: The agreement does not authorize WEPCO to increase emissions. But it is hypothetically possible for emissions to increase at Pleasant Prairie Power Plant, whether or not the agreement is signed. DNR does not forbid new sources of air pollution, or modifications to existing sources. Instead, DNR regulates and permits new source construction and modifications to ensure that air quality is not deteriorated and that all standards are met. In many cases, new emissions can only be permitted if they are offset by an even greater decrease in emissions somewhere nearby. The agreement does not change the environmental standards WEPCO would have to meet under these scenarios. In the coming years, there is every expectation that emissions at the power plant will decrease. DNR and WEPCO firmly believe that decreased emissions will happen sooner and at lower cost if this agreement is signed.

3) **Comment**: What advantages are there to the communities of Pleasant Prairie and Kenosha from this agreement? Are there any local benefits? I hope it will be beneficial to the community but I don't see how. I cautiously agree with WEPCO's goal of reducing pollution in the area, but I'm not sure how this agreement will achieve that outcome. If it improves local air quality, if it improves on standards and actual emissions, I support it. But if it only holds WEPCO to existing standards, which they are already under, and allows them to increase right up to the level of those standards, the net effect for the community is negative.

DNR Response: The agreement has numerous benefits for the state and the region, but it also has several benefits of a very local nature:

- First, WEPCO pledges to take corrective actions any time their daily opacity average exceeds half of their legal limit or their six-minute average exceeds 85% of their limit. This means they will be correcting anomalies long before they ever become environmental problems, and long before any action would be required under their existing permit.
- Second, the agreement will greatly increase the potential for meaningful public involvement in the environmental performance of the Pleasant Prairie Power Plant. WEPCO is committing to a number of activities that are not required by law and are exceedingly rare among the regulated community. To begin with, a team of Interested Persons from the community will be invited to meet with WEPCO at least twice a year. At these meetings WEPCO will provide information, solicit comments, involve the group in reviewing performance under the cooperative agreement, and seek consensus over performance issues. WEPCO will also provide opportunities for the interested persons group to comment on the company's environmental management system and its implementation. DNR can unilaterally revoke the cooperative agreement if WEPCO does not address a substantive issue raised by a majority of the interested persons on this team. Finally, WEPCO will offer more plant tours, send more informational mailings, and post more performance information on its web site than ever before.
- Third, the agreement binds WEPCO to developing and implementing an environmental management system based on an international standard that requires a commitment to continuous improvement. This means the company is binding itself to seek better environmental results each and every year.

4) **Comment**: The agreement creates a new process for granting research and testing exemptions that provides less opportunity for public input than existing procedures. It limits public review and comment to members of the Interested Persons group and to 7 days, instead of to the general public for 30 days. The general public will now be excluded from having any say on these exemption requests. Testing and research activities do not guarantee a positive outcome and public input shouldn't be reduced.

   DNR Response: Research and testing exemptions are routinely processed by DNR and it is exceedingly rare that any comments are received during the public comment period. The intention of this portion of the agreement was to streamline a routine procedure. Because the agreement includes the involvement of an Interested Persons group that is so much more extensive than anything required under current regulations, DNR believes the streamlined procedure for these exemptions is justified. The agreement still requires WEPCO to respond in writing to any significant comment raised by a member of the group before proceeding with the research or testing.

5) **Comment**: WEPCO should be allowed to submit discharge monitoring reports by email as soon as possible, just as some of the air quality reports may be submitted by email.

   DNR Response: DNR is investing substantial resources in developing full electronic reporting capability for discharge monitoring reports (DMRs). This capability will be better for all parties than what can be achieved by simple email reporting. There is a concern among DNR developers that any effort expended by the watershed management program on developing procedures to accept DMRs by email would detract from the effort to develop full electronic reporting. The text of the agreement will not be changed based on this comment.

6) **Comment**: DNR and EPA should expedite the procedures necessary to allow electronic reporting. This will result in savings to all parties.

DNR Response: The agreement will establish an electronic reporting advisory group, including DNR and WEPCO representatives, but DNR and EPA cannot at this time commit to specific deadlines for accepting electronic reports. The issue of making electronic signatures legal is largely beyond the control of DNR, and therefore the schedule is somewhat beyond DNR's control as well.

7) **Comment**: Kenosha County is contaminated with too-high levels of mercury. Pleasant Prairie Power Plant emits over a thousand pounds of mercury per year. How does WEPCO propose to reduce this amount to safe levels – will the agreement help reduce the local mercury load?

DNR Response: The agreement includes a commitment from WEPCO to research and conduct field testing at Pleasant Prairie Power Plant to characterize mercury emissions and to evaluate the performance of mercury control technologies for coal-burning power plants. This could potentially accelerate the discovery and adoption of technologies to reduce mercury emissions, not just at Pleasant Prairie Power Plant but everywhere. Pleasant Prairie Power Plant has been selected as one of only 4 power plants nationally that will voluntarily participate in a $6.8 million Department of Energy test of full-scale mercury emissions controls. Although there are no guarantees of success, WEPCO is doing as much as any other company in the United States (or more) to try to reduce mercury emissions at coal-fired power plants.

8) **Comment**: Pleasant Prairie residents are very concerned about the local impacts of handling and burning ash, especially the air emissions. They fear that this proposal could have negative local environmental consequences, be unnecessarily dangerous, and possibly increase cancer risks or other risks. Many specific questions and issues were raised:

- Where will the ash come from? How much will be used, and what will its composition be? Is it from high-sulfur coal? Does it contain significant amounts of mercury? And will this information be made known to the public?
- If fly ash is valuable for building materials, why would WEPCO want to burn it? Why won't the other power plants be upgraded so Pleasant Prairie doesn't have to deal with the headaches caused by shipments of ash?
- What is known about the air emissions from burning ash? Will it degrade local air quality? WEPCO switched to high-grade coals to improve local air quality. Ash could have relatively high concentrations of pollutants, e.g., sulfur or mercury. Isn't that like switching back to low-grade coal? Will WEPCO have to monitor?
- Will ash recovery and reuse jeopardize groundwater? Didn't truckloads of bottom ash get dumped at the Corporate Park? Are there test wells around the ash to monitor groundwater quality? Will ash already on-site at the power plant be used first? The #1 cell was constructed in wetlands without a bottom liner and should be first priority, then go to other landfills.
- Ash will be transported to the power plant in tank trucks. This truck traffic will increase congestion and reduce air quality due to vehicle emissions. Won't local air quality get worse? Were vehicle emissions, especially diesel emissions, even considered by DNR? This should be part of the agreement.

DNR Response: Most of these questions are answered in the Environmental Cooperative Agreement. They will be briefly restated here, along with answers to the other questions:

- The agreement allows WEPCO to recover ash from 9 different landfills. All are company-owned monofills, meaning they only contain combustion by-products (e.g., ash), and all are located in Southeast Wisconsin. WEPCO expects to use as much as 80,000 tons of ash as fuel and many thousands more as sand/gravel substitute. The composition of the coals burned over the years has been variable, and thus the composition of the recovered materials will be variable. Samples will be taken and evaluated on a regular basis to determine the composition of the material; WEPCO will use this information to determine the best use (fuel or sand/gravel substitute) for each truckload of ash. WEPCO will annually summarize and report the results of this testing and many other parameters related to ash reuse. Also note that U.S. EPA completed a lengthy study of coal ash last year and determined that it is not a hazardous waste.
- Some of the ash to be recovered will still contain significant amounts of energy because it was created when coal was burned in older, less-efficient boilers. In fact, much of this "ash" routinely meets the technical definition of coal, because its chemical composition falls within the normal ranges of coal. In these cases, the value of the recovered material as a fuel exceeds its value as a substitute for sand and gravel. Because Pleasant Prairie Power Plant is the most efficient plant in the WEPCO system, it is the place where the most useful energy can be extracted from the ash.
- WEPCO has done emissions testing and has previously been authorized to burn ash in limited cases. That authorization was given after the DNR reviewed the test results and concurred that burning ash with coal would not degrade air quality. This is not surprising, for two very good reasons. First, we again note that much of this ash meets the technical specifications to be called coal. And second, the ash is blended with coal at a very small percentage, roughly 1%-3%. Considering these two points together, the resulting fuel is not very different from 100% coal. AS for the emission test results, there was no discernible difference in sulfur dioxide emissions, and WEPCO will continue to operate equipment that continuously monitors sulfur dioxide. If emissions were to increase unacceptably it would be known immediately. The tests also showed no significant change in nitrogen oxides, volatile organic compounds, or carbon monoxide emissions. This means the area's unhealthy levels of ozone will not be worsened by this activity. The test results showed that an increase in particulate matter emissions was possible, but those emissions would still be less than 6% of established limits even in the worst case. (And here too, note that WEPCO is committing via the agreement to research on continuous monitoring technology for particulate emissions.) Finally, an analysis of potential emissions of metals and other hazardous air pollutants showed there would be no off-site impacts above standards. DNR found that the only hazardous air pollutant that was potentially of concern was arsenic, so the agreement contains a binding and enforceable limit on arsenic emissions. To make a long story short, WEPCO's request to burn ash was already deemed approvable under existing rules. WEPCO could request a permit and would be granted this permission under normal rules even if the cooperative agreement were not signed.
- Attachment 1 of the agreement includes detailed requirements negotiated by DNR to ensure that ash recovery is safe, environmentally responsible, and won't jeopardize land or groundwater quality. Groundwater monitoring at those landfills is routinely conducted. Over the long term, recovering ash from some of the older landfills will actually reduce the risk of groundwater contamination. At the power plant, ash storage will occur only in a fully enclosed steel building. When ash is reused as a sand/gravel substitute, for example as fill material at the Corporate Park, it must meet specific DNR guidelines developed to protect the land and groundwater from contamination. As far as prioritizing

which ash to recover first, that decision is left up to WEPCO. WEPCO assures DNR that the landfill at Pleasant Prairie will be one of the first to be used.

- DNR generally does not regulate vehicle emissions associated with industrial activity, but does not deny that there could be environmental and quality-of-life impacts. These impacts should not be exaggerated, however. Trucks hauling ash from the existing landfill on-site at the power plant would not even use public roads. Again, WEPCO has pledged that this on-site landfill would be one of the first from which they will recover material. Trucks hauling ash from other landfills would generally travel via Interstate 94 to Highway 165, then travel about two miles through a non-residential area on roads with adequate capacity to handle additional truck traffic. DNR expects no significant overall change in area traffic. Environmentally, DNR believes that truck emissions are offset by the fact that the ash will displace significant amounts of coal. That means less coal needs to be mined in Wyoming, and fewer train cars of coal will need to be shipped 1000 miles to Wisconsin. It also means less coal stored outdoors at the power plant (ash will be stored indoors). Furthermore, ash that is used in building materials reduces the need for non-metallic mining operations (sand, gravel, or limestone). This can also offset some of the emissions from Portland cement production.